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IN THE

Supreme Court of the United States

October Term, 1953

No. 290

TITO NERI, doing business under the name of IMPRESA DI SALVATAGGI FRATELLI NERI (Neri Brothers Salvage Enterprise),

Petitioner,

AGAINST

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

PAUL C. MATTHEWS,
Counsel for Petitioner.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Tito Neri, doing business under the name of Impresa Di Salvataggi Fratelli Neri (Neri Brothers Salvage Enterprise), prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit which became final on June 3rd, 1953.

Opinions Below.

The opinion of the Court of Appeals for the Second Circuit (R. 242-248) handed down June 3, 1953 is reported at 204 Fed. (2d) 867.

The opinion of the District Court for the Southern District of New York (R. 230-235) is reported at 102 F. Supp. 718.

Jurisdiction.

The judgment of the Court of Appeals (R. 250) was entered on June 3rd, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Questions Presented.

Did the Treaty of Peace between the United States and Italy signed on February 10th, 1947 (61 Stats. 1245) and an agreement known as the Memorandum of Understanding (R. 212-223) entered into between these Governments on August 14th, 1947, bar a salvage claim which arose on October 8th, 1946.

Or did the salvage claim not arise directly out of war so as not to be barred by the Treaty of Peace, and further, was the salvage accomplished by vessels engaged in purely commercial activities so as to be in that class of claims which is specifically excepted in the Memorandum of Understanding.

Should the Courts below have determined the value of the services rendered by the petitioner even though they held that there was no obligation on the part of the Government of the United States.

Statutes Involved.

This suit is brought under the authority of the Public Vessels Act, 46 U. S. C. 781. It involves an interpretation of the Treaty of Peace between the United States and Italy, 61 Stat. 1245.

Summary Statement.

The S.S. "Signal Hills", a T-2 tanker, owned by the United States of America and operated by the Pacific Tankers Company pursuant to a General Agency Agreement, while on a voyage from Vardo, Italy to Bahrein in the Persian Gulf, struck a mine off the coast of Italy in the vicinity of Livorno on October 8th, 1946. The vessel had proceeded into a charted and known mine field and was in a mined area when it first gave its position after the explosion.

The petitioner, a national of Italy, was in the shipping business in Livorno, and when assistance was requested three of his tugboats were dispatched to render aid to the S.S. "Signal Hills". These vessels promptly and efficiently towed the S.S. "Signal Hills" safely to Livorno.

At the time these services were rendered, Italy and the United States were still technically at war. However, hostilities had ceased throughout the world on the 15th day of August, 1945. On the 25th day of July, 1943, the Italians overthrew the Fascist regime in Italy and signed terms of armistice on the 3rd and 29th days of September, 1943. Beginning on September 23rd, 1943, they joined with the Allies as a co-belligerent against the Nazis and declared war on Germany on the 13th day of October, 1943. The Treaty of Peace with the United States, however, was not signed until February 10th, 1947.

Specification of Errors to be Urged.

The Court of Appeals erred:

1. In holding that the negligence of the officers of the tanker "Signal Hills" in taking the vessel into a mined

area was of no moment in determining how the claim arose.

2. In failing to find that the language of the Memorandum of Understanding was in the nature of a save-harmless clause and would permit the United States to recover from the Government of Italy in the event of a judgment against the United States.

3. In not finding that the petitioner's vessels were engaged in purely commercial activities and, therefore, were exempted by the language of the Memorandum of Understanding.

Reasons for Granting the Writ.

1. The Court below has interpreted the obligations under the Treaty of Peace between the United States and Italy, which should be passed on by this Court.

The Treaty of Peace between the Government of Italy and the Government of the United States was entered into on February 10th, 1947, and the treaty was ratified on June 14th, 1947. It became effective on October 15th, 1947 (61 Stat. 1245).

Under Part IV, CLAIMS ARISING OUT OF WAR, Section III, Renunciation of Claims by Italy, Article 76, 61 Stat. 1245, at Page 1401, it is set forth the type of claim which is waived, barred and extinguished. Such claims are specifically stated in Paragraph 1 to be only those "arising directly out of war or out of actions taken because of the existence of a state of war in Europe after September 1, 1939, whether or not the Allied or Associated Power was at war with Italy at the time, including the following: * * * (b) Claims arising from the presence, operations, or actions of forces or authorities of Allied or Associated

Powers in Italian territory". Technically, a state of war existed between the United States and Italy until the Peace Treaty was signed. Therefore, the claim of the petitioner arose during the war. However, there is no language in either the Treaty of Peace or the Memorandum of Understanding which states that all claims arising during the war are to be barred.

The District Court held that the petitioner's claim arose from the presence, operations or actions of forces or authorities of the United States. It is the contention of the petitioner that this claim arose solely by reason of the negligent navigation of the tanker "Signal Hills" in that the course that it followed took it into a known mine field. This is a question of proximate cause. The services rendered by the petitioner were not made necessary because the S.S. "Signal Hills" was in the Mediterranean Sea or because it was in European waters. They were made necessary solely because the vessel was navigated into a mine field which was known and charted and listed in the instructions on board the vessel as a danger area (R. 19-20; 156-157).

If this vessel had struck a charted reef, a rock, a shoal or a sunken ship, and the salvage services had been rendered, there is little doubt that this suit would not have been barred by the provisions of the Treaty. But, because, in this case the vessel struck a mine, it is difficult to remove from one's mind a thought that the claim is one arising out of war. Once the location of the mine field is known and its boundaries plotted, it is merely another navigational hazard.

The Court of Appeals in its opinion (R. 247) rejected this argument stating "claims based on negligence are within the all inclusive language of bar". The petitioner's claim is not and was never based on negligence, it seeks

an award for salvage services. It was barred by the Courts below because of the language of the Treaty of Peace and the Memorandum of Understanding. The language in the Treaty of Peace is very definite as to which claims are barred and it is those claims arising directly out of war or because of the presence, operations or actions of forces or authorities with Allied or Associate Powers in Italian territory. Simply stated, the S.S. "Signal Hills" required assistance because it was negligently navigated. The salvage claim arose not for any of the reasons set forth in the treaty but because of the negligent navigation.

This Court is urged to review this matter and determine whether or not the claim of the petitioner falls within the language of the Treaty of Peace.

2. The Court below has interpreted the obligations under the Memorandum of Understanding entered into between the Government of the United States and the Government of Italy on the 14th day of August, 1947, and these rights, being international in nature, should be passed upon by this Court.

The Memorandum of Understanding entered into between the United States and Italy on August 14th, 1947, provides that any of the clauses of the Treaty of Peace to which this Memorandum of Understanding might refer, should be considered as constituting an integral part of the Memorandum of Understanding (R. 223).

Article I of that agreement provides, *inter alia,* as follows:

> "1(a) In affirmance of and connection with Article 76 of the Treaty of Peace with Italy, dated at Paris February 10, 1947, the Government of Italy waives all claims of Italy of any descrip-

tion, arising directly out of the war or out of actions taken because of the existence of a state of war in Europe after September 1, 1939, against United States nationals or the Government of the United States of America * * *

1(b) The Government of Italy further discharges and agrees to have harmless the Government of the United States of America from any responsibility and liability for the processing, settlement and satisfaction of any such claims of Italian nationals.

2(a) The Government of Italy waives any claims of Italy against the Government of the United States of America * * * arising out of actions with respect to ships under Italian registry and flag, including ships in which there is an Italian interest, between September 1, 1939 and the coming into force of the present 'Memorandum of Understanding * * *

* * * * *

4(a) The Government of Italy discharges and agrees to save harmless the Government of the United States from any responsibility and liability for the processing, settlement and satisfaction of any claims.

(i) of Italian nations, whether or not in the courts of any country, respecting which the ultimate liability is that of the Government of the United States of America, and arising out of maritime incidents, occurring between September 1, 1939 and the coming into force of the present Memorandum of

Understanding, excluding incidents involving ships engaged in purely commercial activities; * * *"

The purpose of the Memorandum of Understanding is stated in a Department of State Bulletin, Volume XVII, No. 425, August 24th, 1947, P. 372; "Both Mr. Lombardo and Mr. Lovett stated that the understandings had been worked out in the common desire to assist Italy and at the same time to protect the rights of nationals of both countries."

Throughout the Memorandum of Understanding, the language distinguishes between claims of the Government of Italy and claims of Italian Nationals. The word used with respect to claims of the Government of Italy is always "waives", while the words used in respect to Italian Nationals are "discharges and agrees to save harmless the Government of the United States from any responsibility or liability for the processing and settling of any such claims of Italian Nationals".

This language itself indicates that it anticipates processing, settlement and satisfaction of claims. If this were not so, there would be no reason for stating anything other than "The Government of Italy discharges any claims of Italian Nationals." The fact that the language includes "agrees to save harmless the Government of the United States from any responsibility and liability for the processing, settlement and satisfaction of any claims" indicates that the claims of Italian Nationals are to be kept alive, processed, settled and satisfied. The cost of all this is then to be paid to the United States by the Government of Italy.

The Treaty of Peace further excludes incidents involving ships engaged in purely commercial activities. The

S.S. "Signal Hills" was admittedly a public vessel and was so engaged, but just as the S.S. "Signal Hills" was a public vessel, so also were the tugs of the petitioner engaged in purely commercial activities. The name of the petitioner's firm indicates that its business is salvage. The petitioner took this risk to save a valuable vessel and expended $2,500.00 (R. 558) as a commercial venture. The risk was great and the reward depended entirely upon a successful endeavor (Benedict on Admiralty, 6th Edition, Volume 1, Section 120).

A salvage claim is in the nature of a bounty or reward (Benedict on Admiralty, 6th Edition, Volume 1, Section 117, Page 334) and in this claim $1,695,000.00 was rescued and $132,000.00 was risked (R. 13-14). It seems apparent that a claim of this sort so favored in the law should be afforded a careful review by this Court.

CONCLUSION.

This petition for a writ of certiorari should be granted for a review of this case as outlined above.

Respectfully submitted,

PAUL C. MATTHEWS,
Counsel for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 290

TITO NERI, DOING BUSINESS UNDER THE NAME OF IMPRESA DI SALVATAGGI FRATELLI NERI (NERI BROTHERS SALVAGE ENTERPRISE), PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 230-235) has been reported at 102 F. Supp. 718. The opinion of the United States Court of Appeals for the Second Circuit (R. 242-246) has been reported at 204 F. 2d 867.

JURISDICTION

The judgment of the Court of Appeals was entered on June 3, 1953 (R. 247). The petition for a

writ of certiorari was filed on August 26, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED

Whether, in view of the Peace Treaty with Italy and of the implementing Memorandum of Understanding, the Italian owner of tug boats who during the American occupation of Italy (in 1946) rendered assistance to a public vessel of the United States under orders from the American occupying authorities is entitled to claim salvage from the United States or whether such liability, if any, has been assumed by the Italian Government.

CONVENTION, TREATY, AND AGREEMENTS INVOLVED

The pertinent provisions of the Military Armistice with Italy of September 3, 1943 (61 Stat. 2740); of the Instrument of Surrender of Italy of September 29, 1943 (61 Stat. 2742); of the Peace Treaty with Italy dated February 10, 1947, and effective September 15, 1947 (61 Stat. 1245); of the Memorandum of Understanding entered into between the Governments of the United States and Italy on August 14, 1947 (61 Stat. 3962); and of the Hague Convention Respecting the Laws and Customs of War on Land (36 Stat. 2277) are set forth in the Appendix *infra*, pp. 10-16.

STATEMENT

In the Fall of 1946, *i.e.*, before the Peace Treaty with Italy went into effect, the Tanker *Signal Hills*, a public vessel of the United States allocated to the United States Navy (R. 206, 226), was carrying oil for the United States Navy (R. 226). On Oc-

tober 8, 1946, having discharged a cargo of oil from Texas at Vado Ligure in Italy for use of the American forces of occupation (R. 226), the *Signal Hills* proceeded from that port in ballast for Bahrein, on the Persian Gulf, to take on another cargo of oil for the Navy (R. 226). At about 6 a.m., approximately four hours after the vessel had left Vado Ligure [1] and was at the edge of a mined area [2] some 25 miles from Livorno, Italy (R. 243),[3] there was an explosion apparently caused by a mine (R. 226). At 6:40 a.m., the master of the vessel advised the United States Naval Command in Rome that the vessel had struck a mine (R. 113). The Naval Command ordered the Italian authorities at Livorno to send aid to the assistance of the *Signal Hills* (R. 227-228).[4] The Italian Port Commander, who at that time was subject to the overall author-

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[1] The *Signal Hills* had left Vado Ligure at 1:47 a.m. on October 8, 1947 (R. 113).

[2] The area had been mined prior to the Armistice by the Italians in order to deny the use of the port of Livorno to the Allies (R. 39).

[3] There was testimony to the effect that the master of the *Signal Hills* had been advised that this area had been cleared of mines (R. 176-177).

[4] At that time, under the terms of the Military Armistice, par. 5 (*infra*, p. 10), and of the Instrument of Surrender of Italy, pars. 14, 18, 19 (*infra*, pp. 10-11), Italian merchant shipping was subject to requisitioning by the Allies, and all ports and harbors, together with necessary installations, facilities, services, and personnel, were to be made available to the Allies. Moreover, under par. 20 of the Instrument of Surrender (*infra*, pp. 11-12), the Allies exercised all the rights of an occupying power and thus had the right to requisition all means of transportation. Hague Convention Respecting the Laws and Customs of War on Land, Annex, Art. 53(2), 36 Stat. 2308 (*infra*, p. 16); War Department Field Manual FM 27-10, Rules of Land Warfare, par. 293: "The military occupant exercises authority over all means of transportation, both public and private within the occupied district, and may seize and utilize them and regulate their operation."

ity of the Allied Forces (R. 227-228), thereupon ordered petitioner, engaged in the salvage business (R. 227), to send tugs to the aid of the *Signal Hills* (R. 226).

After having struck the mine, the *Signal Hills* was stopped for almost an hour; she then proceeded at half speed for about forty-five minutes, covering about six miles (R. 168-169). At about 7:30, the master stopped the engines, believing that the vibrations might endanger the vessel (R. 227). Rescue vessels, including two Italian mine sweepers, two of petitioner's tugs, and an American Army tug, began to reach the *Signal Hills* shortly after noon; at that time she was drifting toward the mine field (R. 227).[5] She was taken into tow first by an Italian minesweeper and shortly thereafter by one of petitioner's tugs, and by the American Army tug. The two military vessels cut their tow lines and were replaced by two additional tugs belonging to petitioner, which towed and assisted the *Signal Hills* until she docked in Livorno (R. 227).

On September 15, 1947, the Italian Peace Treaty of February 10, 1947 (61 Stat. 1245, 1401-1402) went into effect. In Article 76 (*infra*, pp. 12-13), Italy, on behalf of the Italian Government and Italian nationals, waived all claims arising directly

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[5] There was sharply conflicting testimony whether the *Signal Hills* was in the mine field at that time. The District Court felt it unnecessary to make any pertinent findings (R. 231). The circumstance that neither the *Signal Hills* nor any of the five rescue vessels hit a mine after they reached her would tend to indicate that she was outside the mined area at that time. Cf. R. 199-200.

out of the war or out of actions taken because of the existence of a state of war in Europe, including (among others) (a) claims for losses and damages sustained as a consequence of acts of forces or authorities of Allied or Associated Powers (Art. 76, par. 1 (a), (b) claims arising from the presence, operations, or actions of forces or authorities of Allied or Associated Powers in Italy (par. 1 (b)), (c) claims arising out of the exercise or purported exercise of belligerent rights (par 1 (d)), and, finally, (d) claims arising out of actions taken by the Allied and Associated Powers with respect to Italian ships (Art. 76, par. 5). Pursuant to Art. 76, par. 2, the waiver completely and finally bars and extinguishes all claims covered by it; persons who furnished supplies or services on requisition to the Allied Powers were to receive equitable compensation in lire from the Italian Government.

The Memorandum of Understanding of August 14, 1947 (61 Stat. 3962, *infra*, pp. 13-15), designed to implement the financial provisions of the Peace Treaty, reaffirmed the waivers and discharges (contained in Art. 76 of the Treaty) of claims arising directly from World War II (Art. I), and in particular provided for the discharge, or indemnity in case payment had been made, of claims arising out of actions with respect to ships under Italian registry and flag (Art. I(2)). The Memorandum of Understanding also discharged, in a most sweeping manner, all such claims, for which the United States was ultimately liable, which arose from maritime incidents which occurred between September

1, 1939, and August 14, 1947, excluding incidents involving ships engaged in purely commercial activities (Art. I(4)(a)(i)).[6]

In January 1948, petitioner filed its libel for a salvage award (R. 1, 4-7). The United States defended on the grounds (a) that petitioner was not entitled to a salvage award because the service had not been rendered voluntarily but under orders, (b) that a salvage award, if any, would have to be of a very modest nature since the services had been rendered outside the mined area, and thus did not subject petitioner's property to any serious risk, but (c) above all, that pursuant to Section 76 of the Peace Treaty with Italy and to the Memorandum of Understanding the liability, if any, of the United States had been discharged and assumed by the Italian Government.

The District Court, passing only on the last defense (R. 231), dismissed the libel. After a detailed discussion of the provisions of the Peace Treaty and of the Memorandum of Understanding, it held that the claim arose from the presence, operations, or activities of forces or authorities of the United States in Italy (R. 233), that it was the obvious purpose of the Treaty and Memorandum "to free the United States from any claim resulting from the war and/or occupation of Italy" (R. 233), and that, although the terms of the Treaty were intended to be liberal, it seemed "highly un-

[6] The District Court found expressly that the *Signal Hills* was not engaged in purely commercial activities at the time petitioner's tug assisted it (R. 228); the Court of Appeals concurred in this finding (R. 246).

likely that any victorious nation would allow the nationals of the defeated nation to sue the victor on claims arising from the war or occupation" (R. 235).

The Court of Appeals affirmed in a carefully reasoned opinion which again subjected the Treaty and Memorandum to painstaking analysis (R. 242-246).

ARGUMENT

The petition contains essentially two arguments: first, that petitioner seeks to enforce a salvage claim resulting from the negligent navigation[7] of the *Signal Hills,* which is not covered by any of the clauses of the Treaty and Memorandum of Understanding; and, second, that, in any event, the Treaty does not provide for the discharge of petitioner's claim but merely for indemnification of the United States by the Italian Government for any payment made to petitioner. Both contentions are refuted by the plain language of the Treaty and Memorandum.

Petitioner's claim is clearly encompassed by the agreements, either as one arising from a maritime incident or as one based upon the requisitioning of the services of petitioner's tugs by the occupying authorities. The Treaty specifically waives claims, on behalf of all Italian nationals, "arising directly

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[7] It will be noted that the Findings of Fact (R. 225-228) do not contain any finding that the master of the *Signal Hills* was guilty of negligence. The Court of Appeals accordingly held the assertion that the salvage claim was caused by negligent navigation to be contrary to the findings of the District Court (R. 246).

out of the war," including claims for losses sustained "as a consequence of acts" of Allied authorities; petitioner's salvage claim arose both because its services were requisitioned by the Naval authorities and also because an American public vessel was in distress after it had struck an Italian mine. For the same reasons, the claim is likewise covered by the separate Treaty clauses waiving claims "arising from the presence, operations, or actions of forces or authorities" of the Allies, and "claims arising out of the exercise or purported exercise of belligerent rights" (which include the power to requisition). All claims "arising out of action taken" by the Allies during the state of war "with respect to Italian ships" are waived by still another paragraph of the Treaty. The Memorandum of Understanding is even more explicit in its coverage, and leaves no doubt whatever. *Supra,* pp. 5-6; *infra,* pp. 13-15.

Similarly, there can be little doubt that the Treaty and Memorandum provide for the discharge of the claims they cover, not merely for indemnity.[8] The District Court and the Court of Appeals have so concluded after thorough analyses of the international agreements. See *supra,* pp. 5-6; R. 234-5, 246. The Treaty renounces and bars all claims "completely and finally", and provides that they will be "henceforward extinguished"; the Memo-

[8] The indemnity clauses, stressed by petitioner, plainly were inserted into the Memorandum of Understanding out of superabundance of caution to guard against the situation that the United States might have paid or might be compelled to pay a claim released by the Treaty.

randum of Understanding "discharges" the claims "whether or not asserted in the courts of any country".[9]

Since the decision below is plainly correct and the case is unique,[10] we submit that further review is not warranted.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER, 1953.

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[9] There can be no doubt as to the validity of the discharge provisions. *United States* v. *Chemical Foundation, Inc.*, 272 U.S. 1, 11; *Santovincenzo* v. *Egan*, 284 U.S. 30, 40; *United States* v. *Belmont*, 301 U.S. 324, 332; *United States* v. *Pink*, 315 U.S. 203, 228.

[10] To our knowledge, this is the only case involving the interpretation of Article 76 and of the corresponding provisions of the Memorandum of Understanding. Since the Peace Treaty has been in effect for more than six years, it is not likely that new cases raising these issues will arise in the future.

APPENDIX

1. The Military Armistice of September 3, 1943, concluded between the Allied Forces and the Government of Italy (61 Stat. 2740), provides in pertinent part:

> 5. Italian merchant shipping may be requisitioned by the Allied Commander in Chief to meet the needs of his military-naval program.

2. The Italian Instrument of Surrender of September 29, 1943 (61 Stat. 2742 *et seq.*) provides in pertinent part:

> 14. (A) All Italian merchant shipping and fishing and other craft, wherever they may be, and any constructed or completed during the period of the present instrument will be made available in good repair and in seaworthy condition by the competent Italian authorities at such places and for such purposes and periods as the United Nations may prescribe. Transfer to enemy or neutral flags is prohibited. Crews will remain on board pending further instructions regarding their continued employment or dispersal. Any existing options to repurchase or re-acquire or to resume control of Italian or former Italian vessels sold or otherwise transferred or chartered during the war will forthwith be exercised and the above provisions will apply to all such vessels and their crews.
>
> (B) All Italian inland transport and all port equipment will be held at the disposal of the United Nations for such purposes as they may direct.

* * * * *

18. The forces of the United Nations will require to occupy certain parts of Italian territory. The territories or areas concerned will from time to time be notified by the United Nations and all Italian Land, Sea and Air Forces will thereupon withdraw from such territories or areas in accordance with the instructions issued by the Allied Commander-in-Chief. The provisions of this article are without prejudice to those of article 4 above. The Italian Supreme Command will guarantee immediate use and access to the Allies of all airfields and Naval ports in Italy under their control.

19. In the territories or areas referred to in article 18 all Naval, Military and Air installations, power stations, oil refineries, public utility services, all ports and harbors, all transport and all intercommunication installations, facilities and equipment and such other installations or facilities and all such stocks as may be required by the United Nations will be made available in good condition by the competent Italian authorities with the personnel required for working them. The Italian Government will make available such other local resources or services as the United Nations may require.

20. Without prejudice to the provisions of the present instrument the United Nations will exercise all the rights of an occupying power throughout the territories or areas referred to in article 18, the administration of which will be provided for by the issue of proclamations, orders or regulations. Personnel of the Italian administrative, judicial and public services will carry out their functions under the con-

trol of the Allied Commander-in-Chief unless otherwise directed.

3. The Peace Treaty with Italy of February 10, 1947, effective September 15, 1947 (61 Stat. 1245 *et seq.*) provides in pertinent part:

Article 76

1. Italy waives all claims of any description against the Allied and Associated Powers on behalf of the Italian Government or Italian nationals arising directly out of the war or out of actions taken because of the existence of a state of war in Europe after September 1, 1939, whether or not the Allied or Associated Power was at war with Italy at the time, including the following:

(a) Claims for losses or damages sustained as a consequence of acts of forces or authorities of Allied or Associated Powers;

(b) Claims arising from the presence, operations, or actions of forces or authorities of Allied or Associated Powers in Italian territory;

(c) Claims with respect to the decrees or orders of Prize Courts of Allied or Associated Powers, Italy agreeing to accept as valid and binding all decrees and orders of such Prize Courts on or after September 1, 1939, concerning Italian ships or Italian goods or the payment of costs;

(d) Claims arising out of the exercise or purported exercise of belligerent rights.

2. The provisions of this Article shall bar,

completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest. The Italian Government agrees to make equitable compensation in lire to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Italian territory and in satisfaction of non-combat damage claims against the forces of Allied or Associated Powers arising in Italian territory.

* * * * *

5. The waiver of claims by Italy under paragraph 1 of this Article includes any claims arising out of actions taken by any of the Allied and Associated Powers with respect to Italian ships between September 1, 1939, and the coming into force of the present Treaty, as well as any claims and debts arising out of the Conventions on prisoners of war now in force.

4. The Memorandum of Understanding of August 14, 1947 (61 Stat. 3962 *et seq.*) provides in pertinent part:

ARTICLE I

RENUNCIATION OF CLAIMS BY ITALY OR ITALIAN NATIONALS

1. (a) In reaffirmation of and connection with Article 76 of the Treaty of Peace with Italy, dated at Paris February 10, 1947, the Government of Italy waives all claims of Italy of any description, arising directly out of the war or out of actions taken because of the existence of a state of war in Europe after

September 1, 1939, against United States nationals or the Government of the United States of America, any of its agencies, or contractors or sub-contractors of, or licensees from the Government of the United States of America or its agencies.

(b) The Government of Italy further discharges and agrees to save harmless the Government of the United States of America from any responsibility and liability for the processing, settlement and satisfaction of any such claims of Italian nationals.

2. (a) The Government of Italy waives any claims of Italy against the Government of the United States of America, its agencies or United States nationals arising out of actions with respect to ships under Italian registry and flag, including ships in which there is an Italian interest, between September 1, 1939 and the coming into force of the present Memorandum of Understanding, including claims with respect to the use of Italian ships for civilian or other passenger carriage.

(b) The Government of Italy further discharges and agrees to save harmless the Government of the United States of America from any responsibility and liability for the processing, settlement and satisfaction of any such claims of Italian nationals.

* * * * *

4. (a) The Government of Italy discharges and agrees to save harmless the Government of the United States of America from any responsibility and liability for the processing, settlement and satisfaction of any claims:

(i) of Italian nationals, whether or not asserted in the courts of any country, respecting which the ultimate liability is that of the Government of the United States of America, and arising out of maritime incidents, occurring between September 1, 1939 and the coming into force of the present Memorandum of Understanding, excluding incidents involving ships engaged in purely commercial activities; or

(ii) of Italian nationals or persons domiciled or resident in Italy against the Government of the United States of America, its contractors and sub-contractors, or licensees therefrom, for royalties ultimately paid or payable by the United States of America, or for use of inventions, patented or unpatented, or for infringement of patent rights, arising out of any use of patents or inventions by the Government of the United States of America or such contractors, sub-contractors or licensees, in connection with the wartime activities of the United States of America or programs connected therewith.

(b) The Government of Italy further waives any such claims of Italy.

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8. With respect to any of the waivers included in the present Article, the Government of Italy reaffirms its obligations to make equitable compensation in lira to the extent set out by the terms of Article 76(2) of the Treaty of Peace.

5. The Hague Convention Respecting the Laws and Customs of War on Land of October 18, 1907, 36 Stat. 2277 *et seq.*, provides in pertinent part:

ARTICLE 53

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.

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CERTIORARI

DENIED